Montana State Legislature

2009 Session

Exhibit 6

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EXHIBIT 6
DATE 3/17/09
SB 437

POND AND STREAM CONSULTING, INC.

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Written Testimony in Opposition to Senate Bill 437

Prepared for:

House Fish, Wildlife and Parks Committee
Kendall Van Dyk - Chair

Prepared by:

Pond and Stream Consulting, Incorporated
Bozeman, Montana

Date:

March 17, 2009

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Chairman Kendall Van Dyk
House Fish, Wildlife and Parks Committee
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

Dear Chairman Van Dyk,

Please find attached our written testimony in opposition to Senate Bill (SB) 437, sponsored by the Honorable Senator Gary Perry. We sincerely appreciate your careful consideration of all of the information we provide in our written and verbal testimony, and will be happy to answer any questions you or other members of the House Fish, Wildlife and Parks Committee may have. Included at the back of the report are three appendices. Appendices A and B are legal opinions we have obtained related to the bill. Appendix C is a compilation of letters and emails of private individuals and business that oppose the bill.

Our business involves professional improvement and development of fish and wildlife habitat, primarily for and at the expense of private landowners. I am formally educated in trout and salmon biology, stream ecology, and trout fishery management. I am also a native trout enthusiast. My partner Alex Fox is an engineer and a conservationist – we are a conservation-minded firm. We each have over 13 years of intensive experience developing and managing private fish ponds in Montana, and feel we do a great job at creating trout ponds that use little or no water, well within the limitations of the established criteria for exempt groundwater set forth by the Montana Legislature.

This bill has no potential to positively affect State fisheries or water resources, and as such, has been grossly misrepresented by its proponents. In fact, exempt groundwater fish ponds consume less than one percent of all exempt groundwater used state-wide, which the Montana Legislature has deemed inconsequential. While we are not attorneys, we understand the process of Private Non-Commercial Pond License (PPL) acquisition from the Montana Department of Fish, Wildlife & Parks (FWP) as well as anyone we know of. Accordingly, we hope that you and the other committee members read and understand the attached testimony.

Sincerely,

J. Scott Davis
Principal/Fisheries Biologist

Alex Fox
Principal/Resource Engineer

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Figure 2. Relative Evaporative Loss from Fish Ponds Using Exempt Groundwater in the Gallatin River Drainage Compared to Other Uses, with Evaporative Loss from Canyon Ferry Reservoir Provided for Perspective.

Note: Evaporation Rate Used is 2.17 AF/acre for Canyon Ferry and Ponds -- all other uses are resticted to Gallatin River drainage

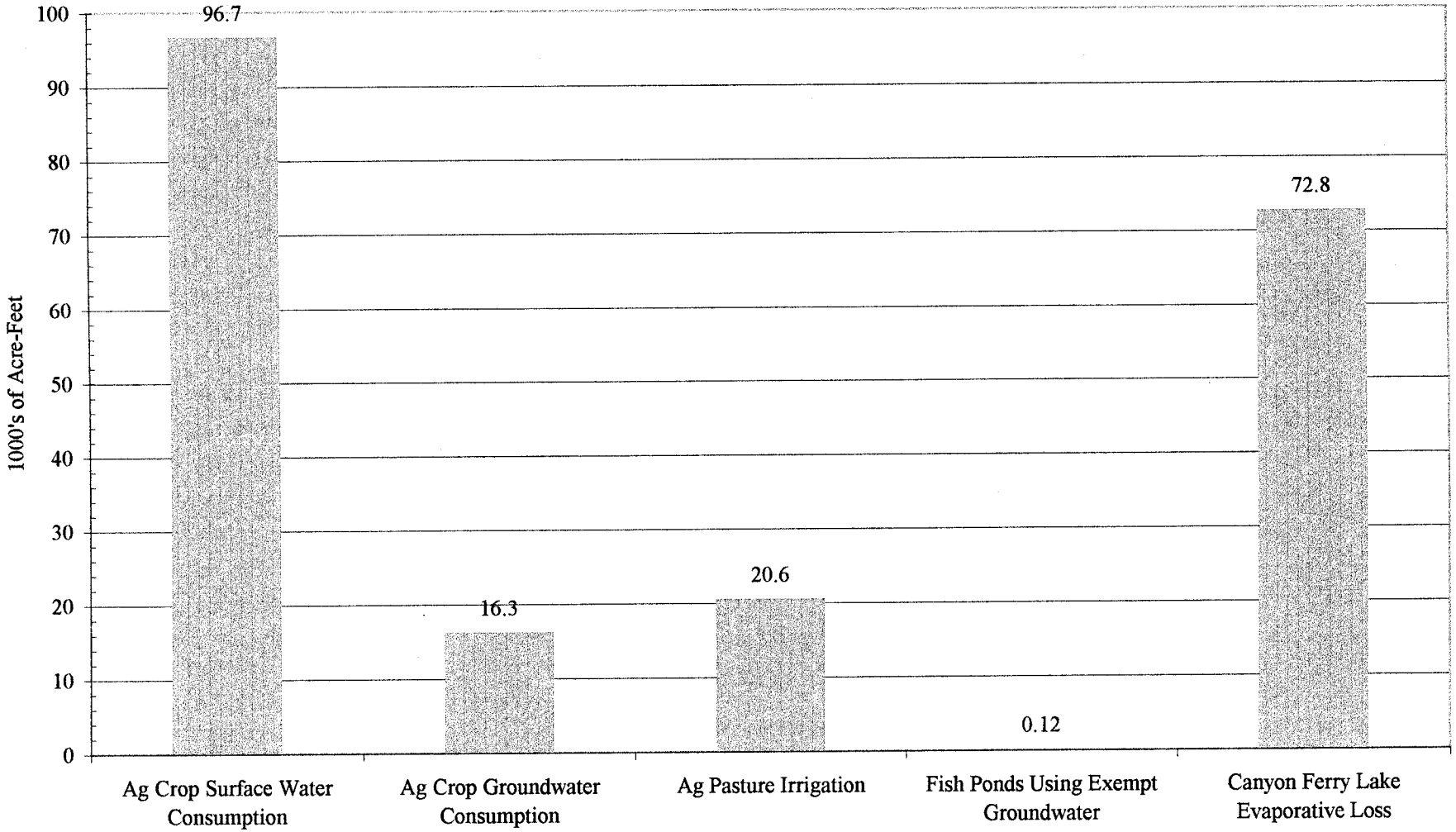

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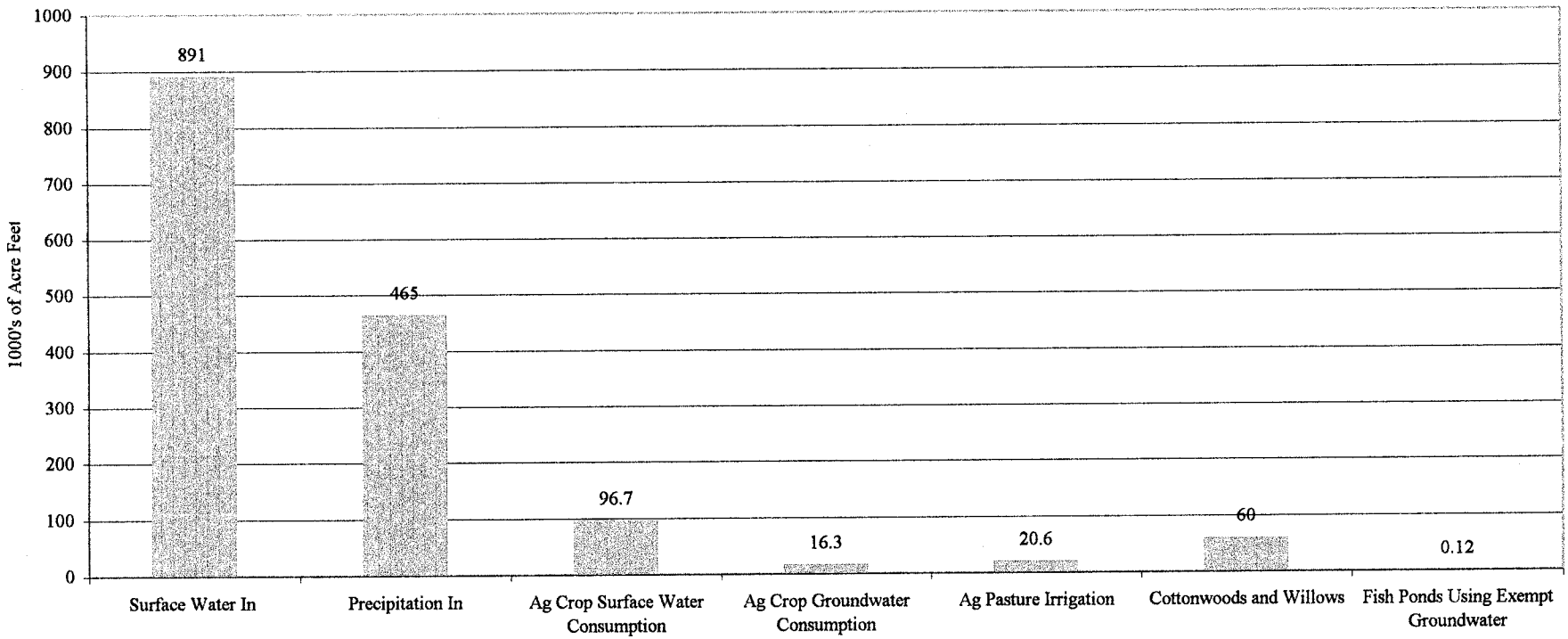
Figure 1. Evaporative Water Loss from Fish Ponds with Exempt Groundwater Rights versus Gallatin River Basin Water Supply and Other Consumptive Water Uses (Average Water Year)



GENERAL NOTES

This chart is intended to illustrate the relationship of Gallatin River basin water supply, agricultural consumptive use, and other uses (domestic, L&G, other valley wide evapotranspiration, free water surface evaporation, etc.), and net evaporative losses from fish ponds using exempt groundwater appropriations. Evaporative loss on exempt groundwater fish ponds was calculated with the following reasonable (conservative) assumptions: average pond area is 0.33 acres; and net evaporation rate is 2.17 acre-feet per acre. Surface water includes the Gallatin River south of Gallatin Gatway combined with the East Gallatin River at Bridger Creek (2002-2008). We do not contend this table is perfectly accurate in all respects, but is relatively accurate, and illustrates relative evaporative loss via fish ponds on exempt groundwater rights. The estimated number of fish ponds (173) on exempt groundwater was obtained via a DNRC water right query search of groundwater certificates with the beneficial use listed as "fishery" or "fish and wildlife". The same search with beneficial use not specified returned 18,904 total groundwater certificates. Accordingly, with regard to basin water supply, fish ponds in the Gallatin River watershed using exempt groundwater certificates as a precondition to licensing lose approximately 120 AF of water via evaporative loss of the total 891,000 AF of basin water supply (0.01%), excluding precipitation. The point is, fish ponds on exempt groundwater use an infinitesimal amount of water, and do not affect other water users. The Gallatin River basin should be viewed as a "worst-case scenario" relative to statewide density of fish ponds.

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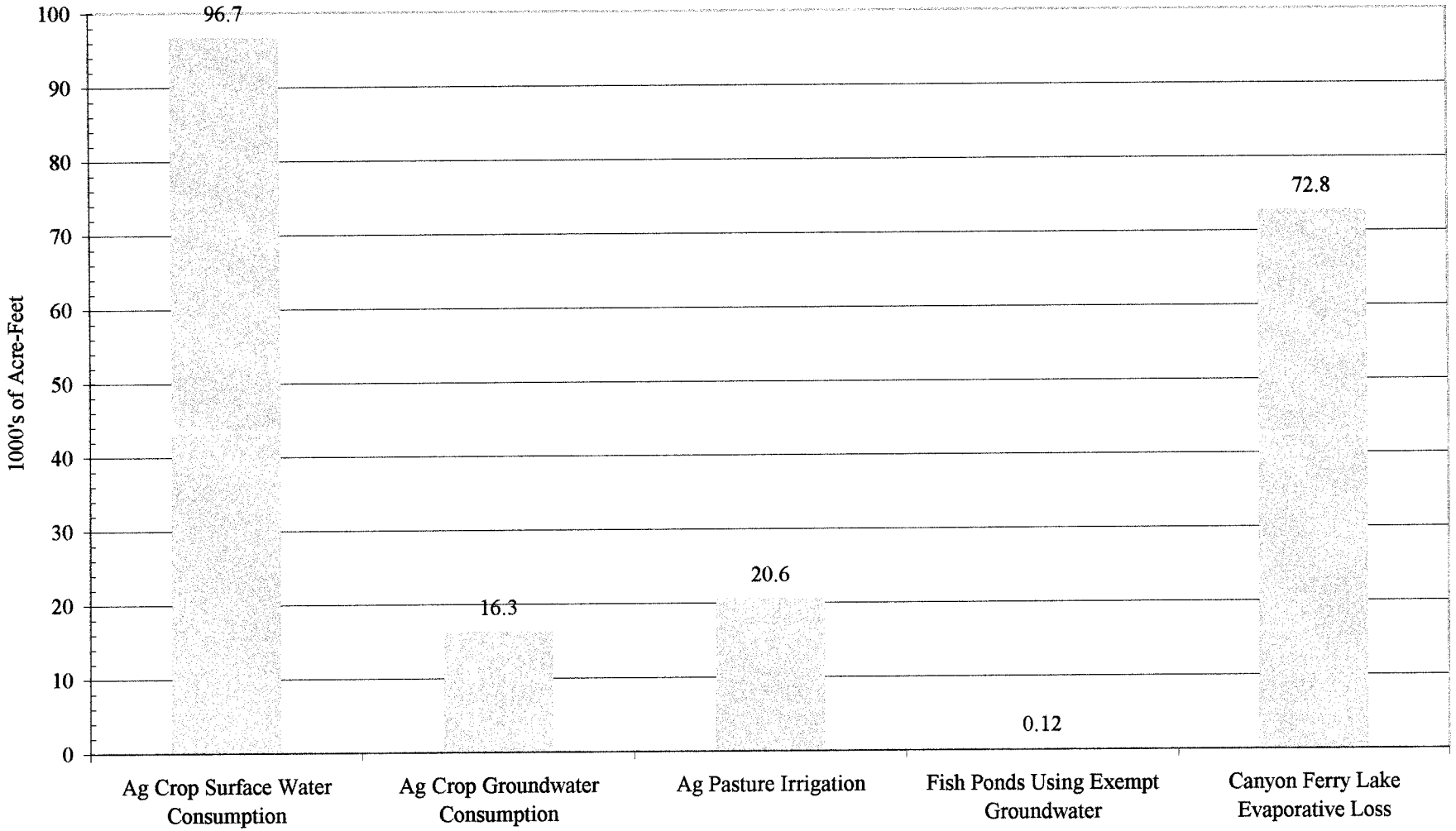

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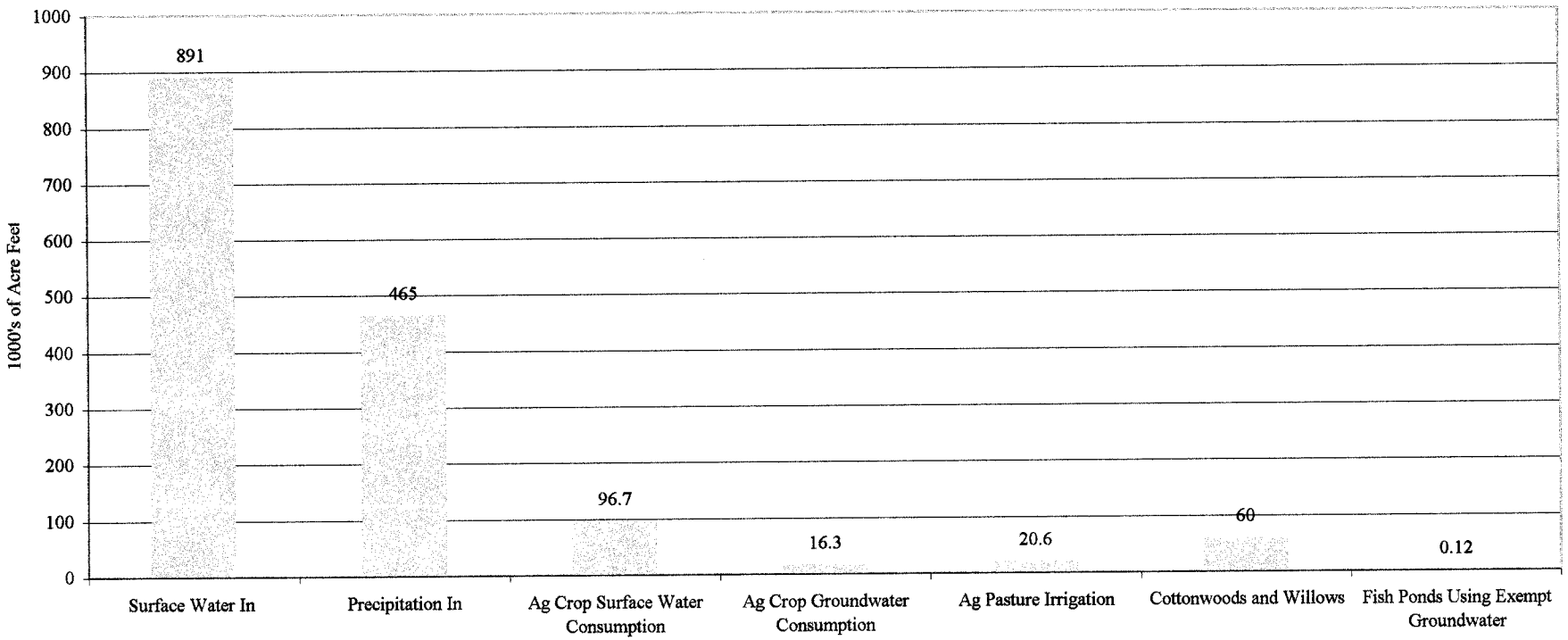

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